
1987-1988 ANNUAL REPORT

April 1, 1987–March 31, 1988

Human Rights

A Responsibility
We all share.

British Columbia Council of Human Rights

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Council of Human Rights
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Province of
British Columbia

British Columbia
Council of
Human Rights

Second Floor
844 Courtney Street
Mailing address:
Parliament Buildings
Victoria
British Columbia
V8V 1X4
Telephone: (604) 387-3710
Toll Free: 1-800-663-0876

The Honourable Norman Jacobsen
Minister of Labour and Consumer Services
Parliament Buildings
Victoria, British Columbia

Sir:

On behalf of the British Columbia Council of Human Rights, I am pleased to submit to you the Annual Report of the British Columbia Council of Human Rights for the period April 1, 1987 to March 31, 1988.

John I. D. Joe
Chairman



Remarks From the Chairman

It is fitting to open this report by remarking on the changes to the Council's membership. The Council would first like to extend its appreciation to former Council Chairman James R. Edgett and Member Natexa Verbrugge for their personal and professional contributions to the Council during the past three years. Both left the Council in July 1987, James Edgett to retire after a lengthy and distinguished career in the civil service, and Natexa Verbrugge to return to private life. Eric Powell and Doug Wilson continue to serve as Council Members. The Council welcomes two new members, Lorna Barr and Helen Hughes, who have already proven themselves valuable additions to the Council.

An expansion of efforts by the Council in the public sphere has helped to more actively inform British Columbians about their rights to protection from discrimination. Educational initiatives in this reporting year included the publication of guides to the complaint process under the *Human Rights Act* and to the Council's hearing process, supplementing a guide to filing a complaint published last year, a poster and essay contest for elementary and secondary schools aimed at developing youth awareness of human rights, and numerous speaking engagements to different interest groups in most regions of the province. These activities all helped to disseminate information about the Council's process in particular and human rights in general to all residents of the province.

In addition to these publicly oriented activities, the Council has endeavoured to increase the efficiency of processing and investigating complaints of discrimination. Last year (1986 - 87), two new staff positions, Supervisor of Investigations and Disclosure Officer, were added to the Council to meet this need. In this reporting year the Council accepted 263 complaints for investigations, referred 122 complaints to hearings, and conducted over 40 hearings. The discrepancy between the number of complaints accepted for hearings and the number of hearings actually held can be partially accounted for by settlements reached prior to the hearing and withdrawals of complaints. It also indicates, however, a need for more improvements to the Council's process in order to better serve its mandate of protecting persons who are discriminated against.

Other procedural changes have taken place as a result of judicial decisions. The jurisdiction of the Council and its interpretation of the *Human Rights Act* have been modified. The British Columbia Court of Appeal, in *Connell and Harrison v. University of British Columbia* (1988), held that the Act's definition of "age" contravened the *Charter of Rights and Freedoms* and was therefore declared of no force and effect. The result of this decision is that discrimination on the basis of age, prohibited under the employment related sections (6, 8 and 9) of the Act, is no longer restricted to those persons between the ages of 45 and 65.

The Council is therefore accepting complaints of discrimination from individuals of all ages, which includes those who are being forced to retire at age 65 or over and those who feel they have been discriminated against because they are too young. The decision in *Connell and Harrison* will be reviewed by the Supreme Court of Canada.

Finally, it is appropriate at this time to extend a word of thanks to the Council's staff, the Industrial Relations Officers who assist the Council with its investigations, and other persons who have worked throughout the year to promote the principles of human rights.

John Joe
Chairman

I The Administration of Human Rights in British Columbia

(a) Mandate of the Council

The British Columbia Council of Human Rights was created in September 1984 upon the proclamation of the British Columbia *Human Rights Act*. Since 1984, human rights complaints have been received, investigated and adjudicated by the Council. This administrative agency is mandated to review allegations of discrimination in an impartial manner and, where necessary, hold a hearing into the matter.

"Discrimination" is best described as evaluating individuals as members of a group and denying them opportunities because they belong to that group and not due to individual merit. Discrimination on the basis of race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex, age and criminal or summary conviction are all prohibited by the *Human Rights Act* (See Appendix F for a complete text of the *Human Rights Act*).

The Council is also responsible for approving special programs designed to remedy substantive inequalities in our society (Section 19). Without the Council's approval, these programs would contravene the *Human Rights Act*.

(b) Jurisdiction of the Council

The Council's authority is restricted to matters within provincial jurisdiction. Federal matters are dealt with under the *Canadian Human Rights Act*.

The British Columbia *Human Rights Act* prohibits discrimination in the workplace, in public facilities, tenancy, purchase of property, employment advertising, wages, publications, and membership in trade unions and professional and occupational associations.

(c) Members of the British Columbia Council of Human Rights

Five Council Members are appointed by the Lieutenant Governor in Council. During this reporting period Council Chairman James Edgett retired and Council Member John I. D. Joe was appointed Chairman and new members Lorna Barr and Helen Hughes began their work with the Council in August 1987. Members Eric Powell and Douglas Wilson were also re-appointed.

The following staff members of the Council were involved in the administration of human rights complaints through the Council in this reporting year.

Victoria Office:

Lois Akam	Manager
Alan Andison	Supervisor of Investigations
Rita Fayle	Office Manager
Glenna Fink	Receptionist
Nancetta Kobe	Case Management Clerk
Linda McCurdy	Secretary to Council

Patti Steele
Mark Tatchell
Sheila Twilley

Complaints Analyst
Disclosure Officer
Case Management Clerk

Vancouver Office:

Nasim Babul
Gillian MacGregor

Receptionist
Complaints Analyst

II Complaint Procedure Under the *Human Rights Act*

Introduction

The purpose of the *Human Rights Act* is to eradicate discrimination. The *Human Rights Act* is therefore remedial and not punitive in nature. The Council's procedures are designed to ensure that all complaints alleging discrimination are dealt with as expeditiously as possible following the principles of administrative fairness and natural justice. The following describes the Council's complaint procedures in some detail.

(a) Filing the Complaint

In most cases, a complaint is initiated through telephone contact to our Vancouver or Victoria offices (the latter has a toll-free number: 1-800-663-0876) or to an Employment Standards Branch Office. Other Complainants come in person to the office to file their complaints.

The individual, or someone on her/his behalf, then submits either a letter or a Complaint Information Form, available at any Council or Employment Standards Branch Office. The complaint must be received by the Council within six months of the alleged discriminatory act(s) unless the Council decides that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

After receiving the complaint, a complaints analyst usually contacts the Complainant and assembles more information on the matter. Intake documents are prepared using the information gathered.

(b) Review by Panel

Three of the five Council Members (the "panel") serve on a rotation basis to review the intake documents prepared by the complaints analyst. After this review, the panel decides whether or not the complaint should proceed to investigation. The panel will discontinue proceedings if the complaint:

- (i) is not within the Council's jurisdiction;
- (ii) is better dealt with under another Act;
- (iii) is trivial, frivolous, vexatious or made in bad faith; or
- (iv) was filed past the limitation period.

(c) Investigation

If the panel of three Council Members decides that an investigation is warranted, the case is assigned to an Industrial Relations Officer (IRO) in the region where the complaint originated. Facts surrounding the alleged incident(s) of discrimination are generally assembled through personal interviews in an impartial manner by the IRO assigned to the case. Potential sources of information to which the IRO may turn are the Complainant (the person making the

complaint), the Respondent (the person or company the complaint is against) and witnesses or other persons involved. The officer may also collect relevant records and documents.

The Supervisor of Investigations coordinates the investigations and ensures that all relevant information is gathered.

(d) Disclosure

Once the IRO's investigative report is received by the Council, a summary of the investigation is sent to the parties involved in the complaint. The Complainant(s) and the Respondent(s) then have 30 days to respond to the summary and make any amendments. Any new relevant information will also be disclosed in order to give the parties an opportunity to respond to the new information.

(e) Decision After Investigation

After this disclosure, the same panel of three Council Members reviews the complaint. Under section 14 (1) of the *Human Rights Act* they can either:

- (i) discontinue the proceedings;
- (ii) recommend a settlement of the complaint, and where the recommendations are not accepted by either the Complainant or the Respondent, submit a report to the Minister;
- (iii) submit a report to the Minister; or
- (iv) designate one Member of the Council to hold a hearing.

The panel's decision is communicated to the parties in writing. If the panel decides to discontinue the proceedings, the Complainant receives written reasons for this decision.

(f) Hearing

The hearing is conducted by a designated Member of the Council (the "Member Designate") who was not on the panel which reviewed the case. This ensures that hearings are fair and impartial. The proceedings are open to the public. The Complainant and the Respondent are entitled to legal representation. If either party cannot afford a lawyer, they may apply for legal assistance through the Legal Services Society of British Columbia. During the hearing, evidence is presented, witnesses under oath are examined and cross-examined and other submissions are made. All of the evidence which would be admissible in a court of law is admissible in a Council hearing. The Member Designate, however, is not bound by strict rules of evidence, and has authority to receive all necessary information.

(g) Decision and Order

After the hearing, the Member Designate writes a decision which is sent to the parties. Ten days after the decision is sent to the parties, it is released to the press and public.

If the complaint is found to be substantiated, the Member Designate will make an Order pursuant to section 17 (2) of the *Human Rights Act*. The Member Designate:

- (i) shall order the person who contravened the Act to cease the contravention and to refrain from committing the same or a similar contravention;
- (ii) may make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the Council, s/he was denied contrary to the Act;
- (iii) may compensate the person discriminated against for all, or a part of, any wages or salary lost, or expenses incurred, by the contravention; and
- (iv) may order, in addition to, or instead of (ii) and (iii), that the person who contravened the Act pay to the person discriminated against an amount not exceeding \$2,000.

This order may be filed by the Complainant with the British Columbia County Court or Supreme Court, after which the Order has the same force and effect as an order of that court. Orders may then be enforced under the *Court Order Enforcement Act*.

(h) Judicial Review

Any party to a complaint may seek judicial review of a Council decision to the British Columbia Supreme Court. Under the *Judicial Review Procedure Act*, an application for judicial review can be tendered if a party believes that the Council decision was made outside of its jurisdiction or if the decision reflects a legal error. As stated in *Century Oils (Canada) Inc. v. Davies* (1988), 9 C.H.R.R. D/4659, the court will not intervene with a decision of the Council unless it finds that the decision was "patently unreasonable."

(i) Statistics

During this reporting year, the Council reviewed 296 intakes, 24 of which were discontinued, 18 because they were not within the Council's jurisdiction; 1 was considered trivial, frivolous, vexatious or in bad faith; and 5 were filed past the limitation period.

Of the 263 cases reviewed after investigation, 181 were discontinued (111 because they were resolved and 70 because they were unwarranted).

Hearings were ordered for 122 cases in this reporting year, 28 of which were settled prior to hearing, 11 of which the Complainant did not pursue, and six of which were dismissed. In 27 cases orders were made in favour of the Complainant.

The Council had 281 files remaining open at the close of this reporting year (March 31, 1988) (For a complete statistical description of the Council's activities, see Appendix C).

III Special Programs: Section 19 (2)

Anyone may seek the approval of the Council for a program or activity whose goal is the improvement of the conditions of disadvantaged individuals or groups. The Council may, after a review of the objectives of the program, deem that it is not in contravention of the *Human Rights Act*.

The Council granted exemptions to a variety of activities and programs during this reporting year.

Frank Wing Memorial Bursary, Camosun College Foundation: A scholarship granted only to students of a minority group who indicate some financial need was approved by the Council. Its object is to enhance the training and educational opportunities of these disadvantaged groups.

Federal Job Strategy, Employment Equity Surveys: Simon Fraser University, the University of British Columbia and Modern Cleaning Inc. all sought approval to conduct surveys which would determine the representation of disadvantaged groups (such as women, Natives, physically disabled persons and minority groups) under their employ. The Council, in approving the program, found that the objective of these surveys was to eliminate discriminatory employment practices.

Other programs approved by the Council were in the Port Alberni Home Support Association hiring program, School District No. 57 (Prince George) Intensive Child Care Resource Program, School District No. 63 Indian Education Program, School District No. 57 (Prince George) Secondary Learning Resource Program, and the Lower Mainland Society for Residences for the Physically Handicapped hiring program.

IV Sexual Harassment: A Human Rights Concern

During this reporting year, 21.43% of complaints filed with the Council were based on allegations of sexual harassment. This signifies the severity of the problem in British Columbia. Sexual harassment is sex discrimination for the purposes of the *Human Rights Act*. Under the *Human Rights Act*, sexual harassment is prohibited in schools, restaurants and hotels and other services and facilities, as well as in tenancy premises and in the workplace. The Council has investigated complaints of sexual harassment in all of these areas. The majority of complaints received, however, concern the sexual harassment of female employees in the workplace.

Complaints of sexual harassment have been considered at hearings before Members Designate, before Boards of Inquiry and before the courts. The leading case in British Columbia is *Zarankin v. Johnstone* (1984).

In *Zarankin*, the British Columbia Supreme Court upheld the decision of the Board of Inquiry, which held that sexual harassment is sex discrimination within the meaning of the *Human Rights Act*. Since *Zarankin*, sexual harassment has been more clearly defined for the purposes of bringing a complaint under the British Columbia *Human Rights Act*. It is any inappropriate, objectionable emphasis on the sex of an individual, whether it be verbal, physical or by innuendo. This type of conduct is sexual harassment in the workplace when:

- (a) submission to it is an implicit or explicit term or condition of employment;
- (b) submission to or rejection of it is considered in employment decisions;
- (c) its purpose or effect is to interfere with the individual's work performance; or
- (d) it creates an intimidating, hostile or offensive working environment.

In *Hong v. Kandola* (1987), Member Designate John Joe held that employers are responsible for maintaining a workplace free of such discriminatory behaviour, regardless of whether or not the employer or corporation explicitly condones the sexual harassment. He made reference to *Robichaud* (see Appendix B) in reaching his decision to hold employers responsible for the discriminatory behaviour of their employees:

Only an employer can remedy the undesirable effects of discrimination; only an employer can take the necessary steps to prevent the recurrence of that discrimination; and only an employer can provide the most important remedy — a healthy work environment.

It is good business practice, as well as the responsibility of the employer, to be aware of sexual harassment in the workplace. If a hearing is held, and a complaint of sexual harassment is found to have been substantiated, the Council Member who conducted the hearing may order that the employer reimburse the employee for any lost wages or expenses incurred as a result of the harassment, and up to \$2,000 as compensation for the humiliation suffered as a result of the discrimination. In ordering the Respondent to pay the maximum amount of damages to the Complainant in *Hong*, Mr. Joe took account of the effects of the harassment on the individual Complainant:

... there is clear evidence regarding the pain and humiliation suffered by the Complainant as a result of the discrimination. As part of her employment, the then sixteen-year-old Complainant was continuously subjected to degrading and frightening treatment by her supervisor. She indicates that she suffered a loss of not only self esteem but also of self confidence and that her subsequent contacts with employers and other persons were marked by feelings of distrust and fear.

The decision in *Zarankin* emphasized that it is the Complainant's perception of the harassment that is relevant to the decision of whether or not discrimination took place in the circumstances of the case and how detrimental the effects of that discrimination were to the Complainant.

The British Columbia Council of Human Rights has endeavoured to eliminate sexual harassment in all its forms both through its complaint process and public education. Speaking engagements held in all regions of the province, often include information on how to file a complaint of sexual harassment.

Individuals who are sexually harassed should respond as quickly as possible. It may be effective to tell the harasser directly that his behaviour is unacceptable and will be reported. The harassment may also be brought to the attention of the supervisor, the union's grievance committee or local support groups. A complaint may be filed at any time with the British Columbia Council of Human Rights. It is a good idea to record the incidents of harassment, including the time and date, the harasser's name, the place and the details of the harasser's conduct which were offensive. This documentation is very important if the person discriminated against decides to file a complaint. Very often sexual harassment occurs where there are no witnesses. Credibility then becomes an issue if a hearing is held into the complaint.

The Council has taken the initiative to prevent sexual harassment by conducting workshops for employers and publishing guidelines for their reference. The workshops provide the employer with the information necessary to institute internal mechanisms to prevent or remedy sexual harassment. With the aid of the Council's information, employers have provided their employees with a more positive working environment, free of sexual harassment and other forms of discrimination. Pamphlets published by the Council explain employers' rights and responsibilities under the British Columbia *Human Rights Act*. From the Council's pamphlets and workshops, employers across British Columbia have begun to institute strong anti-discrimination policies and mechanisms to remedy harassment and other types of discrimination if they occur.

The nature of sexual harassment makes it imperative that the Council increase its efforts to prevent and remedy sexual harassment. Last year the Council re-issued an information pamphlet on sexual harassment translated into Chinese, Punjabi and French. Work continues in public education and through the processing of human rights complaints to eliminate sexual harassment in British Columbia.

Some Case Examples

Hong v. Kandola: John Joe, Chairman of the Hearing, found that R. Kandola, doing business as "The Video Station", discriminated against J. Hong on the basis of sex (sexual harassment).

Hong, 16 years old, worked on call at "The Video Station". K. S. Chohan, who occasionally operated the store, was typically the person responsible for

calling her in. "Almost every time" Hong worked, Chohan would sexually harass her by hugging her, touching her breasts and trying to kiss her. He twice put his hand up Hong's skirt and fondled her.

The Respondents argued that Chohan was not an employee. They provided him with clothing and room and board, but denied that this was in exchange for any services at the store. The Respondents also argued that they were unaware of Chohan's behaviour, thus could not be held responsible.

Although he found that Chohan was an 'employee', Joe also found in his decision that 'discrimination in the workplace' does not necessitate an employer/employee relationship. The lack, therefore, of such a relationship between the employee and the person responsible for the harassment does not preclude a complaint on the basis of sexual harassment. Joe awarded the Complainant \$2,000 as some compensation for the hurt, indignity and embarrassment caused by the discrimination.

Graham v. Sunrise Poultry Processors Ltd.: Lorna Barr found that S. Graham was sexually harassed by her supervisor, Jim O'Donnell, and this harassment forced her to resign from her employment.

After six months of employment with the Respondent, O'Donnell began to ask Graham about her personal life and make sexual advances towards her. Graham rebuffed his advances and O'Donnell in turn began increasing her workload and making unusual requests. After some time, Graham received a letter from O'Donnell threatening dismissal if she refused to carry out her "employment duties."

Barr found that Graham was subjected to unsolicited and unwelcome verbal and physical sexual advances. Graham's work performance suffered as a result of the increased work demands which were reprisals for her rebuff of O'Donnell's advances.

Barr ordered that Sunrise pay Graham \$3,997.83 for wages lost as a result of the discrimination, and \$1,500 as compensation for the embarrassment and indignity she suffered.

Voshell v. Red Baron Restaurants Ltd.: James Edgett found that Red Baron Restaurants discriminated against C. Voshell because of her sex (sexual harassment).

The restaurant owner, Thomas Kogler, verbally, physically and sexually harassed Voshell while she worked as a waitress. Kogler grabbed the complainant, touched her, attempted to kiss her, squeezed her breast, pulled her skirt over her head and pulled the zipper down on the front of her dirndl. Kogler also made offensive sexual remarks to her.

As a result of Kogler's conduct, the Complainant became nervous, scared, and upset, often returning home from work in tears. Voshell eventually quit her job as a result of the harassment.

Edgett found that Voshell would have continued to work if not for the harassment, and therefore ordered that the Respondent pay \$6,750 in lost wages and \$2,000 as some compensation for the humiliation, embarrassment and loss of self-esteem caused by the harassment.

Huhn v. Hunter's Haus of Burgers: Douglas J. Wilson, Chairman of the Hearing, found that Brian Hunter, doing business as 'Hunter's Haus of Burgers', discriminated against Laura Huhn and Tara Chown because of their sex (sexual harassment).

Brian Hunter repeatedly touched, patted the buttocks of, stared and made suggestive remarks to both Laura Huhn and Tara Chown while they were employed as waitresses at Hunter's Haus of Burgers, eventually forcing them to terminate their employment with the Respondent. Huhn testified that she repeatedly told the Respondent to leave her alone and that she would frequently come home upset and crying. After three months of employment, Huhn left her job with the excuse that she could not get more hours. Huhn said that she initiated the complaint in order to ensure that others would not have to endure what she did.

Chown testified that Hunter threatened to fire her when she refused a date with him. She rebuffed him repeatedly and tried to ignore him, but she felt helpless because she needed the work. After Hunter walked into the staff changing room while Chown was changing, the Complainant quit her job. Chown also said that her reason for filing the complaint was to ensure that the Respondent would not harass other employees.

Wilson ordered the Respondent to pay \$2,000 to each of the Complainants as some compensation for the humiliation suffered as a result of the Respondent's harassment.

V Public Education Initiatives

The Council has initiated a variety of publicly oriented activities concerning human rights. Pamphlets and brochures have been published providing guidelines and general information about the procedures of the Council. In this reporting year, the Council answered over 7,000 inquiries, and sent out over 40,000 copies of guides and brochures.

The following are a few examples of other activities engaged in by the Council.

(a) School Programs

(i) POSTER AND ESSAY CONTEST

This year the Council successfully organized its third annual poster and essay contest for elementary and secondary schools. The top three essay writers were awarded \$200 each. Essays were judged on originality, planning, coherent argument, comprehension of human rights, and competence in grammar and spelling. The goal of the contest was to have students think seriously about rights protected by law and why this legal protection is important for both individuals and society. The students were asked to explore historical, political, social and economic reasons for including human rights protection in Canadian law.

The essay winners were Vivan Kilvert (Queen Margaret's School, Duncan), Sophia Gin (Burnaby South Senior Secondary School) and Erin Maconachie (Crofton House School, Vancouver). All of the essays provided a keen insight into the manner with which Canadian youth perceives human rights. For example, Ms. Maconachie explained, with reference to Canada's multicultural heritage, that "(t)o discriminate against certain ethnic groups would be discrimination against a special part of Canada itself."

Poster projects were undertaken in elementary schools in British Columbia. Over 800 posters were submitted from 53 classes. Renfrew School (Vancouver), East Chilliwack School and Hillview School (Vernon) were the three winners of the contest. Students were given the opportunity, through the contest, to explore their own definition of human rights and try to illustrate it in the poster. The winning classes received \$200 each from the Council.

(ii) CURRICULUM PROJECT

Work was undertaken this year to produce a curriculum unit for Grade 11 social studies and Grade 12 law. The project is due to be published in 1989 and will provide a comprehensive guide to the teaching of human rights issues and law.

(b) Speaking Engagements

Staff and Council Members spoke at 113 different functions and gatherings around British Columbia this year. These speaking engagements included:

- The Kelowna Indian Friendship Centre
- Okanagan Women's Coalition
- Youth Human Rights Conference (Penticton)

Prince George Folkfest Multicultural Heritage Society
Quesnel Senior Secondary School
Williams Lake Legal Services Society
Native Courtworkers (Terrace and Prince Rupert)
Kamloops Immigrant Community Centre
Camosun College job re-entry program (Victoria)
Adams Lake Reserve Native Women's Association
King Edward School, job re-entry and career planning courses for women (Vancouver)
Amnesty International Conference at University of British Columbia (Vancouver)
Vancouver Jewish Women's Council
Kitimat Crisis Line
Nanaimo Disabled Conference on Integration
United Fishermen and Allied Workers' Union (Prince Rupert)
Vancouver Domestic Workers' Association

(c) National and International Liaisons

The British Columbia Council of Human Rights is a member of and participant in a variety of national and international human rights organizations. Involvement this year included attendance at the Canadian Association of Statutory Human Rights Agencies (CASHRA) Conference in Toronto, Ontario during which a bid was made for the 1989 CASHRA conference to be held in Victoria, British Columbia.

The Council also participated in the Federal/Provincial/Territorial Continuing Committee of Officials Responsible for Human Rights (to which Council Member Douglas Wilson is British Columbia's official representative), helping to monitor Canada's compliance with international conventions of which Canada is a signatory. It has a co-operative working relationship with the federal Secretary of State offices in Victoria and Vancouver as well as affiliation with law related organizations such as the Legal Services Society, the People's Law School, the Women's Legal Education and Action Fund (LEAF) and the law related education programs at Simon Fraser University and the University of British Columbia.

The Council also began planning for the fortieth anniversary celebration of the United Nations' Universal Declaration of Human Rights, to take place in December, 1988. A poster and essay contest will be co-sponsored with the Canadian Rights and Liberties Federation. Publication of a special report on the Universal Declaration of Human Rights is in the planning stages.

This broad spectrum of activities of both national and international interest expands the Council's involvement in the field of human rights. Participation in these agencies and organizations illustrates the Council's desire to better promote public education of human rights.

APPENDICIES



Appendix A — Settlements

At any time during the complaint procedure, a Complainant and a Respondent may choose to settle the complaint without going to a hearing. Of the 182 cases discontinued at the panel review stage in this reporting year, 111 were settled. A further 28 of 121 cases referred to hearings reached a settlement. Some examples of settlement agreements are briefly examined below.

An Indo-Canadian man alleged that he was denied access to the services of a car dealership because of his race. The settlement included \$490 as a reimbursement for his legal fees and for money paid to the dealership. He also received a letter of apology.

A woman alleged that her employers discriminated against her on the basis of her religion when they docked her hours. She had refused to work on Sundays because of her religious beliefs. The company paid her \$504 as a settlement, representing the money she would have received had she worked the hours she was docked.

A man with Acquired Immune Deficiency Syndrome (AIDS), alleged that his former company refused to grant him long term disability benefits because of his illness. The man withdrew his complaint when the company granted him the benefits.

In another case involving physical disability, a woman alleged that her prospective employer refused to hire her because of her weight. The woman withdrew her complaint upon receipt of \$900, representing lost wages and general damages.

A woman alleged that she was fired from her position of janitor because she is a woman. The parties agreed upon \$500 as a settlement representing some compensation for expenses incurred as a result of changing jobs.

In another complaint of discrimination on the basis of sex, a woman alleged that she was refused temporary employment because of her sex. A settlement was reached whereby the woman received a letter of apology, \$663 as compensation for lost earnings, and \$50 as compensation for the humiliation suffered as a result of the discrimination.

A woman alleged that her former employer sexually harassed her, causing her to resign. She withdrew the complaint upon receipt of \$2,000.

In another complaint of sexual harassment, a woman alleged that her former employer sexually harassed her, causing her to resign. The parties settled on \$750 as compensation for two weeks lost wages.

A woman alleged that she was discriminated against on the basis of sex when an insurance company refused to issue her a policy because she was pregnant. She withdrew her complaint when the company changed their requirements for insurance policies regarding pregnancy.

A man alleged that he had been discriminated against on the basis of a prior criminal charge when his employer terminated him upon learning that he had been acquitted on legal grounds of two criminal charges. The parties settled on payment of \$17,500 to the Complainant.

In another case involving discrimination on the basis of a criminal conviction unrelated to the individual's prospective employment, a man was dismissed from two positions when his employers discovered that he had been charged with a criminal offence. The man withdrew his complaint upon receipt of \$3,000 from the first employer and \$5,000 from the second.

Appendix B — Significant Decisions

(a) Council Decisions

RACE AND ANCESTRY

Alec et al v. Lakeland Hotel

Prohibited Ground: Race and ancestry, section 3 (accommodation, services and facilities) and section 20 (retaliation)

Chairperson of the Hearing: Douglas J. Wilson

Date of Decision: June 4, 1987

Douglas J. Wilson, Chairperson of the Hearing, found that the Lakeland Hotel, Burns Lake, discriminated against Ron Alec, Marlene Alec, Warner Adam, Ruby Adam and Rosemary Johnny because of their race and ancestry, and retaliated against Warner Adam because he filed a human rights complaint.

In April, 1985, the Complainants, all of whom described themselves as Carrier Indians, and some of their friends, were asked to leave the premises of the Respondent's hotel. One of the Complainants had first been asked to leave because he had been sleeping. When he refused, all of the Native Indians in the group were asked to leave and the RCMP was called in to escort them from the premises.

The Complainants all testified that the Respondent regularly discriminated against Native Indians and used excessive force to remove them from the hotel. A former hotel employee also testified that the hotel staff regularly used excessive force to remove intoxicated Native Indian patrons, whereas they were far less violent with white patrons. Indeed, none of the Complainants nor the witnesses had ever seen a white person forcefully removed from the hotel.

After a newspaper article was published on the human rights complaint, the hotel manager barred Warner Adam from the hotel claiming that he was "causing problems for his business". Wilson found that this was retaliation within the meaning of section 20 of the Act.

In finding that there was discrimination contrary to section 3 of the Act, Wilson stated that the hotel had not proved that the Complainants were "undesirable" as defined by the *Liquor Control and Licensing Act*, nor did the Respondents show that all patrons, regardless of race and ancestry, were treated alike.

The hotel was ordered to:

- cease the contravention of the Act, namely discriminating against a person with respect to a service customarily available to the public because of the race or ancestry of that person,
- cease discriminating against a person or persons because that person files a complaint or assists in the investigation of a complaint under the Act,
- pay to each of the Complainants \$500 for the indignity, humiliation, embarrassment and injury to self-respect, and
- pay to Warner Adam an additional \$500 as some compensation for the humiliation caused by the Respondent's violation of section 20 of the Act.

Toth v. Sassy Cuts

Prohibited Ground: Race and place of origin, section 8 (employment)

Chairperson of the Hearing: John I. D. Joe

Date of Decision: July 2, 1987

John Joe, Chairperson of the Hearing, found that Sassy Cuts discriminated against Ping Ping Toth in her employment as a hairdresser in a Vancouver haircutting salon because of her race and place of origin.

Toth, born in Hong Kong, testified that she had been verbally harassed by her co-workers who mimicked her accent, made racist remarks to her, and ostracized her. After she brought her concerns to the company president, the harassment stopped, but Toth was fired shortly thereafter.

John Joe found that Toth was subjected to "differential treatment" by her co-workers, which included racially derogatory remarks and conduct. Joe also found that, although the president of the company had testified that Toth was dismissed due to unsatisfactory work, this was likely untrue. Joe relied upon the testimony of other witnesses in making his finding that the reasons for dismissing Toth were unjustified. The witnesses testified that the incidents upon which the Respondent relied in order to dismiss Toth were "usual" occurrences in the hairdressing business and not valid justifications for dismissal.

Joe ordered that Sassy Cuts Inc. pay Toth \$549 as compensation for lost wages as a result of the dismissal, and a further \$2,000 as some compensation for the hurt, embarrassment and indignity suffered as a result of the contravention.

AGE

Boyles and the B.C. Human Rights Coalition v. British Columbia (Ministry of Human Resources)

Prohibited Ground: Age, section 3 (accommodation, services and facilities) of the *Human Rights Code*

Chairperson of the Hearing: Douglas J. Wilson

Date of Decision: July 6, 1987

This case was originally brought under section 3 of the former *Human Rights Code* which prohibited discrimination in access to public services unless there was "reasonable cause" for the discrimination. The Complainants alleged that the April 1, 1984 *Guaranteed Available Income for Need Act* (GAIN) regulations, which reduced the amount of income assistance to persons under the age of 26 by \$25 in April 1984, was discriminatory under this section of the Code. The B.C. Human Rights Coalition filed a complaint on behalf of all persons under the age of 26 who were affected by the cut, alleging discrimination without reasonable cause.

Both parties agreed that the regulations were *prima facie* discriminatory, however, three further issues were raised in the hearing:

- (a) whether a complaint can be brought under the Code by a class of persons whose members are unidentified,
- (b) whether there was "reasonable cause" for the discrimination, and

- (c) whether a member of the Council of Human Rights, designated as the Chairperson of a Hearing under s. 14 (1) (d) of the *Human Rights Act*, has jurisdiction to make an order in a matter arising under the *Human Rights Code*.

Wilson decided that a complaint can be brought by a class of persons, in this case persons under the age of 26, claiming assistance under GAIN regulations. The Council found that there was no provision in the Code which would prohibit a class action. Indeed, the Code and its substantive sections contemplate protection of the rights of classes of persons. Furthermore, persons other than those affected by the discriminatory act are authorized to file a complaint and attend the hearing.

The then Ministry of Human Resources argued that the simple fact that the Legislature enacted the GAIN regulations constitutes reasonable cause for the discrimination. Wilson rejected this argument, pointing to ample precedent which states that human rights legislation takes precedence over other legislation.

Wilson also found that the Council has jurisdiction to make orders in cases arising under the Code. The Council may hear and determine matters arising under the Code, and, where a contravention is found, order a remedy. Wilson ordered that the Respondent cease discriminating against persons with respect to a service customarily available to the public and refrain from committing the same or a similar contravention in the future.

Counsel for the Complainants had requested that the Respondents pay up to \$100 per person who would have received the benefit if not for the discriminatory regulation. The Complainants requested that the Council make an order requiring the Ministry to search its files to identify those persons entitled to the remedy. Wilson, however, found that no person had attended the hearing to assist in determining the amount to be compensated. As a result, Wilson could not order an appropriate amount of compensation and denied the Complainants this remedy.

PHYSICAL AND MENTAL DISABILITY

Calvin Bigelow v. Westmin Resources Ltd.

Prohibited Ground: Physical disability, section 8 (employment)

Chairperson of the Hearing: Eric Powell

Date of Decision: May 22, 1987

Eric Powell, the Chairperson of the Hearing, dismissed Calvin Bigelow's complaint that Westmin Resources Ltd. refused to employ him because of his hearing condition. The Complainant had been employed as a miner since 1949. He worked for Rocbore mining from March 17, 1985 to November 11, 1985. Westmin Resources requested a short list of the best 40 or 50 miners at Rocbore who were interested in working for Westmin. The Complainant's name, although not initially included on the list, was added by the Assistant Manager of Westmin Resources, known personally by the Complainant's brother.

The short-listed miners were then categorized as either "one" or "two", the former being lead miners who provide direction on a shift, the latter being good miners. The Complainant was rated as a "two." The Respondent's Personnel Manager, Joseph Mercer, then informed the Complainant that he had not been hired.

Mercer stated that the Respondent was interested in hiring "ones", selected by assessing their attitude, experience, skills, production and leadership abilities. The Complainant's hearing disability was thus not a determining factor in the Respondent's refusal to employ him. Testimony of other employees supported Mercer's contention that other individuals with hearing disabilities worked for the Respondent.

Powell concluded that the Respondent's hiring decision was made following a selection process based on individual merit. The Complainant's hearing impairment was, thus, not a factor in its decision. Bigelow's complaint was therefore dismissed.

Berg v. University of British Columbia*

Prohibited Ground: Mental disability, section 3 (accommodation, services and facilities)

Chairperson of the Hearing: Douglas J. Wilson

Date of Decision: December 24, 1987

Douglas J. Wilson, Chairperson of the Hearing, found that the Respondent, University of British Columbia, discriminated against the Complainant on the basis of mental disability when the School of Family and Nutritional Sciences treated her differently from other graduate students by denying her certain services.

Berg enrolled as a graduate student at the Respondent university in 1979. She had been diagnosed as having recurrent depression prior to her admission. The faculty had been supportive of her up until one incident in 1981, after which they withdrew their support and engaged in a series of discriminatory acts. She was, for example, denied a key to the faculty building, and did not receive a "rating sheet". Although the faculty had accommodated her condition in some respects, it did not extend beyond the usual services which could be reasonably expected by students. The Respondents thus failed to "reasonably accommodate" the Complainant due to her condition.

Wilson found that Berg's condition constituted a mental disability under the Act and that she was denied services customarily available to other graduate students. Wilson furthermore found that the Respondent's failure to complete a "rating sheet" for the Complainant meant that she was denied the opportunity to compete for a position as a diatetic intern at the Vancouver General Hospital. The University was ordered to pay \$2,000 as some compensation for the indignity and humiliation suffered as a result of the discrimination.

The Respondents are seeking judicial review of this decision.

Holt v. Cokato Apartments

Prohibited Ground: Physical disability, section 5 (tenancy)

Chairperson of the Hearing: Helen Hughes

Date of Decision: December 30, 1987

Helen Hughes, Chairperson of the Hearing, found that the Respondent discriminated against Claudette Holt when she was refused an apartment which was for rent because of her guide dog, which she relies on due to her visual impairment.

Holt approached the apartment manager with the intention of renting an apartment for herself, her guide dog and her daughter. She was advised that pets were not allowed in the building. The Manager did not change her position even after Holt showed her the Guide Dog Certificate sections of the *Blind Persons Rights Act*. The owner of the building was unaware of the incident until a complaint was filed with the Council.

Hughes found the manager, acting on behalf of the Respondent, discriminated against Holt in denying her an apartment because of her guide dog.

The Respondent was ordered to pay the Complainant \$70 for expenses incurred in attending the hearing and a further \$300 for loss of dignity and humiliation.

SEX

Bernadine Gyoker v. Yashpal Aggarwal, owner of 771 East 30th Avenue, Vancouver, B.C.

Prohibited Ground: Sex and marital status, section 5 (tenancy)

Chairperson of the Hearing: John Joe

Date of Decision: July 15, 1987

John Joe, Chairperson of the Hearing, dismissed Bernadine Gyoker's complaint that the Respondent had denied her tenancy because of her sex and marital status. The Complainant had testified that she had telephoned to enquire about a rental accomodation for herself and her two children. A male person had answered the phone, and told her that since the Complainant did not have a husband, she could not rent the premises.

The Respondent denied having the telephone conversation with the Respondent. The Respondent also submitted evidence, supported by another's testimony, that he was not at his home at the time the telephone call was made. John Joe found that the evidence did not support the Complainant's allegation and therefore dismissed the complaint.

Bardsley v. Weathermark Management

Prohibited Ground: Sex, section 8 (employment)

Chairperson of the Hearing: Helen Hughes

Date of the Decision: January 25, 1988

Helen Hughes, Chairperson of the Hearing, found that Weathermark Management refused to hire Reg Bardsley as a cashier because of his sex.

When Bardsley approached the Respondent for a cashier's position, in answer to a call placed with the Canada Employment Centre, the owner's son informed him that he hired only women as cashiers and the Complainant was therefore not granted an interview.

Hughes found that there was no *bona fide* occupational requirement to justify only hiring females as cashiers. The Respondent was thus ordered to pay Bardsley \$350 as some compensation for his loss of dignity and the humiliation he suffered as a result of the discrimination.

Hobson v. British Columbia Institute of Technology

Prohibited Grounds: Sex (sexual harassment), s. 3 (accommodation, services and facilities)

Chairperson of the Hearing: Douglas J. Wilson

Date of Decision: January 28, 1988

With respect to the jurisdiction of the Council to hear complaints against the Respondent, Wilson held that the Respondent (BCIT) constitutes a service or facility customarily available to the public. BCIT is, thus, not exempt from complaints filed against it under section three of the Act.

Wilson found that admissions requirements do not affect the determination that this service or facility is "public" within the purview of the Act. "Public" in this circumstance implies all persons legally or properly qualified to attend the Institute. As a result the Council could consider Hobson's complaint against BCIT. However, once this jurisdictional question was decided, the parties reached a settlement in the matter.

CRIMINAL CONVICTION

Iwanchuk v. British Columbia (Ministry of Human Resources)

Prohibited Grounds: Criminal conviction, section 8 (employment)

Chairperson of the Hearing: Eric Powell

Date of Decision: December 31, 1987

The Respondent, the then Ministry of Human Resources, was found to have discriminated against Michael Iwanchuk when it refused to hire him for a temporary auxiliary social worker position because of previous criminal convictions unrelated to his employment.

Iwanchuk had applied for a position as a social worker, and gave permission to the district manager of the Ministry to contact his former employer. The manager subsequently learned of Iwanchuk's criminal convictions and informed him that he could not hire him for that reason. Iwanchuk was, some time later, hired by the Ministry as a social worker.

The district manager had claimed that a new personnel directive required that a criminal record check be completed before hiring a prospective candidate. When the personnel officer learned that Iwanchuk had a record, he informed the manager to hire someone who could have a criminal record check completed

without delay. Upon this instruction, the manager hired another candidate who did not have a criminal record.

Powell found that, since Iwanchuk was later hired by the Ministry as a social worker, the same position for which he had applied earlier, his criminal record was unrelated to his employment. He further found that the Ministry had not hired Iwanchuk because of his criminal record. The Respondent was ordered to pay \$2,481 to Iwanchuk as compensation for wages lost by the contravention.

(b) British Columbia Court Decisions

Under the *Judicial Review Procedure Act* any party may apply for judicial review of a Council decision. The following are some examples of significant court decisions that were handed down in this reporting year.

Century Oils (Canada) Inc. v. Davies

British Columbia Supreme Court

Date of Decision: January 28, 1988

Oppal, J. presiding

The Supreme Court upheld the Council decision that Century Oils Inc. discriminated against Christine Davies on the basis of sex when they refused to hire her because she was pregnant.

Although the Act does not explicitly include pregnancy as a prohibited ground of discrimination, it is implicitly included in the definition of discrimination on the basis of sex. Discrimination aimed at part of a group, such as pregnant women within the class of women, is no less discriminatory than if the discrimination were aimed at the whole group. To restrict discrimination to actions that are discriminatory against the whole group is too restrictive an interpretation for the purposes of the Act.

Century Oils was ordered to pay Ms. Davies \$3,600 as compensation for wages lost as a result of the discrimination.

Connell and Harrison v. University of British Columbia*

British Columbia Court of Appeal

Date of Decision: January 6, 1988

Hinkson, MacFarlane, and McLachlan J.J.A. presiding

The B.C. Court of Appeal overturned the B.C. Supreme Court decision that the University of British Columbia's (UBC) mandatory retirement policy was valid. Although the Court had no jurisdiction to review the actual university policy under the Charter of Rights and Freedoms, it did review the definition of "age" in the *Human Rights Act*.

Since "age" is undefined in the Charter, but under the Act it is restricted to those between the ages of 45 and 65 years of age, the Act is inconsistent with the protections granted under the Charter. The Court found that there was no justification for defining age as 45 to 65 and therefore declared the definition of age to be of no force and effect under section 52 of the *Constitution Act, 1982*.

* This decision is being appealed to the Supreme Court of Canada.

Renaud v. School District No. 23 (Central Okanagan) and C.U.P.E. Local 523*

British Columbia Supreme Court

Date of Decision: December 4, 1987

Dohm J. presiding

Natexa Verbrugge, Chairperson of the Hearing from which this appeal had been made, had found that the School Board and the Canadian Union of Public Employees (CUPE) discriminated against Larry Renaud because of his religion. Renaud is a Seventh Day Adventist and cannot, according to his religion, work between sunset Friday and sunset Saturday. The School District fired him from his position as a custodian because he refused to work the three to eleven o'clock Friday evening shift at a Kelowna school.

Verbrugge found that the requirement of working on the Friday shift was not a *bona fide* occupational requirement. The requirement was based on employee preference and employer convenience and had no relation to the job. Verbrugge thus found that the Union and the School Board had a duty to find a reasonable accommodation for Renaud's religious practices beyond a mere discussion of possible accommodation.

The court quashed the Council's decision that the School District and the Union discriminated against Larry Renaud on the basis of religion.

Dohm J. held that requiring a school custodian to work between 3 and 11 p.m. on Friday constitutes a *bona fide* occupational requirement and is, thus, not in contravention of the Act. In analysing the meaning of *bona fide* occupational requirement, the court concluded that such a requirement must be applied to all employees and not the individual Complainant. Since this shift was "a requirement of general application concerning the hours of work and job allocation" and it was not directed solely at Renaud, it is a *bona fide* occupational requirement despite any "consequential discrimination".

* The Council is appealing this decision to the British Columbia Court of Appeal.

British Columbia Workers' Compensation Board v. British Columbia Council of Human Rights*

British Columbia Supreme Court

Date of Decision: February 5, 1988

Southin J. presiding

Southin J. quashed the Council's decision to conduct a hearing into whether the Workers' Compensation Board discriminated against Harjit Singh Khun-Khun on the basis of religion (Sikh) when it discontinued his benefits.

The Court held that the Council had no jurisdiction to review decisions of a statutorily created administrative tribunal such as the Workers' Compensation Board. Southin J. ordered that the Council not interfere with Workers' Compensation Board decisions. Khun-Khun must, then, apply for judicial review or relief under the Charter in order to seek to overturn the Workers' Compensation Board ruling to cut his benefits.

* The Council filed an appeal with the B.C. Court of Appeal in February, 1988. The matter is scheduled to be heard in September 1989.

(c) Supreme Court of Canada: Decisions with a National Impact

Action Travail des Femmes and the Canadian Human Rights Commission v. C.N.R.

June 25, 1987

Dickson, J.

The Supreme Court of Canada reversed a Federal Court of Appeal decision which had held that a Tribunal under the *Canada Human Rights Act* does not have jurisdiction to make an order for the Respondent to adopt a special program.

The Tribunal had ordered that CNR hire one woman in every four people hired until the percentage of women working in unskilled blue collar jobs with the CNR is 13%. The decision had been prompted by the fact that only 0.7% of unskilled blue collar positions in the St. Lawrence region are held by women. This low representation of women is due to the hiring, recruiting and promotion policies of CNR, which prevent or discourage women from working in blue collar jobs. Thus the Tribunal made an order which would in effect institute a special program in the hiring policies of CNR.

In his decision, Dickson J. explained that the institution of such a program is not a form of compensation for past discrimination, but a manner of ensuring that future applicants are not subjected to similar discriminatory hiring practices. Dickson J. further explained that there is no prevention of such discrimination without some form of remedy, and that the Tribunal has the jurisdiction to order such a remedy in cases such as this.

Robichaud v. Canada (Treasury Board)

July 29, 1987

Laforest, J.

The Supreme Court of Canada, reversing the Federal Court of Appeal, held that employers are liable for the discriminatory acts of their employees made in the course of employment. The Department of National Defence is therefore liable for the sexual harassment of Bonnie Robichaud by her supervisor while she was employed by the Department of National Defence.

The Supreme Court of Canada reasoned that the purpose of human rights legislation is to remedy discrimination and to eliminate the effects of discriminatory acts. If human rights legislation were interpreted so as to deem employers not liable for the discriminatory acts of their employees, it would undermine the remedial nature of the legislation. The *Canadian Human Rights Act* is concerned with the effects of discrimination, not the causes, and only the employer can remedy undesirable effects. Reinstatement, compensation for lost wages and ensuring a discrimination-free environment in the workplace are all remedies only an employer can adequately provide.

Having decided the matter of liability of employers, the question of whether discrimination actually occurred was referred back to the Canadian Human Rights Commission.

Appendix C — Statistics

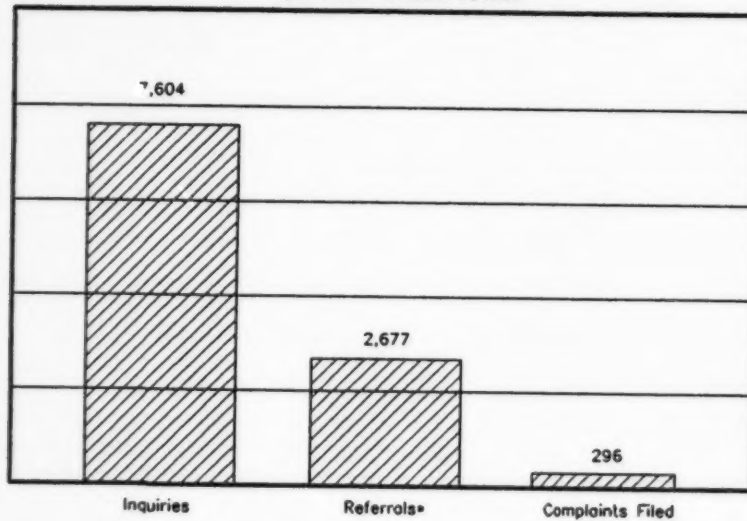
April 1, 1987 – March 31, 1988

The following tables detail the nature of complaints received, the level of intake activity, the disposition of complaints prior to investigations under Section 13 of the *Human Rights Act* and dispositions of complaints following investigations.

Index of Tables

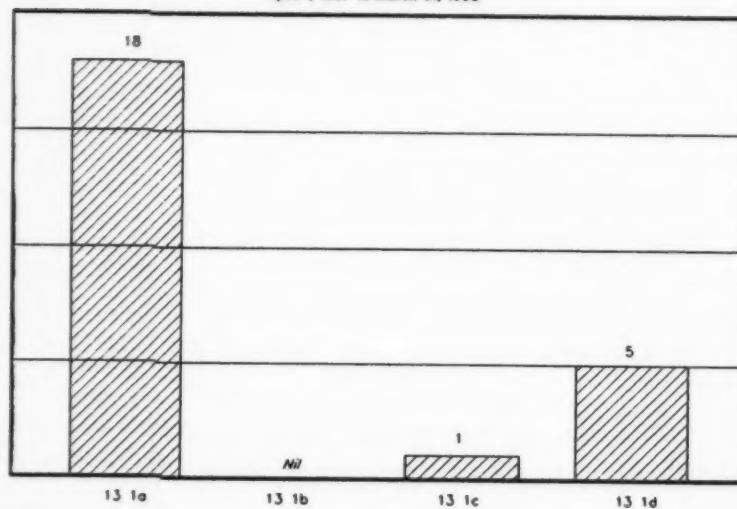
- Table 1 Intake Activities — April 1, 1987 to March 31, 1988
- Table 2 Disposition under Section 13 (1) — April 1, 1987 to March 31, 1988
- Table 3 Status of Complaints — at March 31, 1988
- Table 4 Disposition of Complaints Referred to Hearing — April 1, 1986/
March 31, 1987 — April 1, 1987/March 31, 1988
- Table 5 Complaints by Prohibited Grounds — April 1, 1987 to March 31,
1988
- Table 6 Complaints by Section of the Act — April 1, 1987 to March 31, 1988

Table 1
INTAKE ACTIVITIES
 April 1, 1987 to March 31, 1988



*Referrals are persons seeking assistance who are referred to another agency which can best assist them

Table 2
DISPOSITION UNDER SECTION 13(1)
 April 1, 1987 to March 31, 1988



LEGEND:

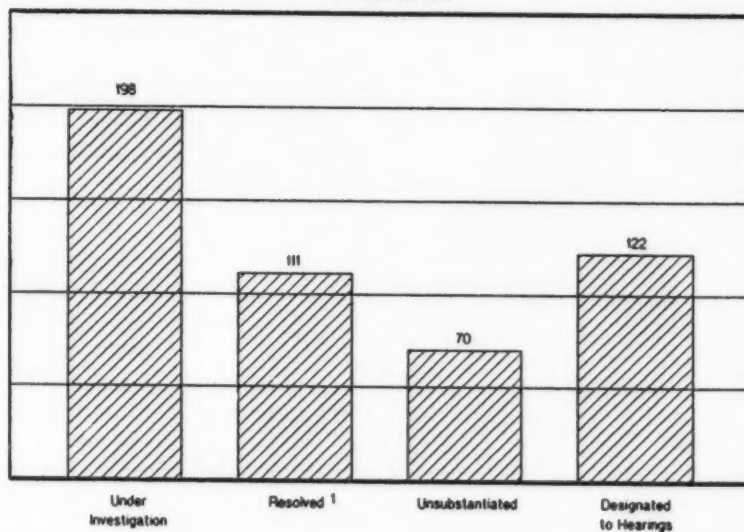
- 13 1a: Not within the jurisdiction of the Council
- 13 1b: More appropriately dealt with under another Act
- 13 1c: Is trivial, frivolous, vexatious or made in bad faith
- 13 1d: Based on facts that occurred more than six months before complaint was filed

TOTAL 24

Table 3

STATUS OF COMPLAINTS

As March 31, 1988



LEGEND:

TOTAL 501 ²

1. Resolved includes complaints that are settled, withdrawn or not pursued
2. Total includes complaints carried forward from the previous reporting period

Table 4

DISPOSITION OF COMPLAINTS REFERRED TO HEARING

April 1, 1986/March 31, 1987 - April 1, 1987/March 31, 1988

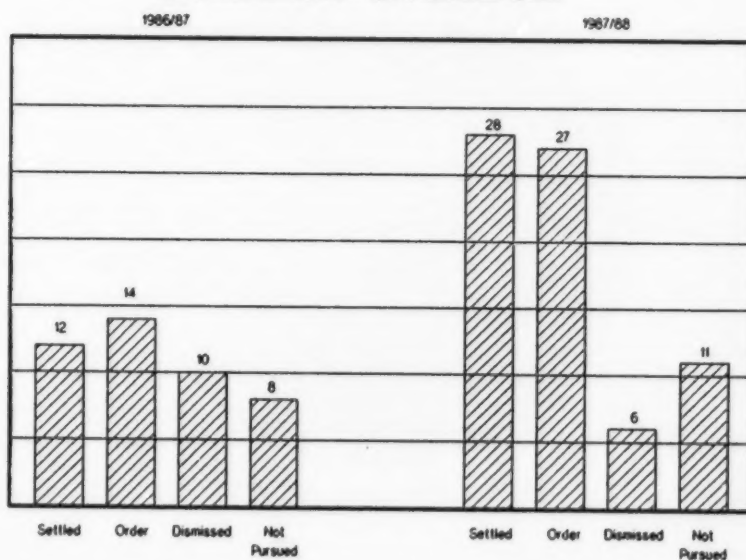


Table 5

COMPLAINTS BY PROHIBITED GROUNDS

April 1, 1987 to March 31, 1988

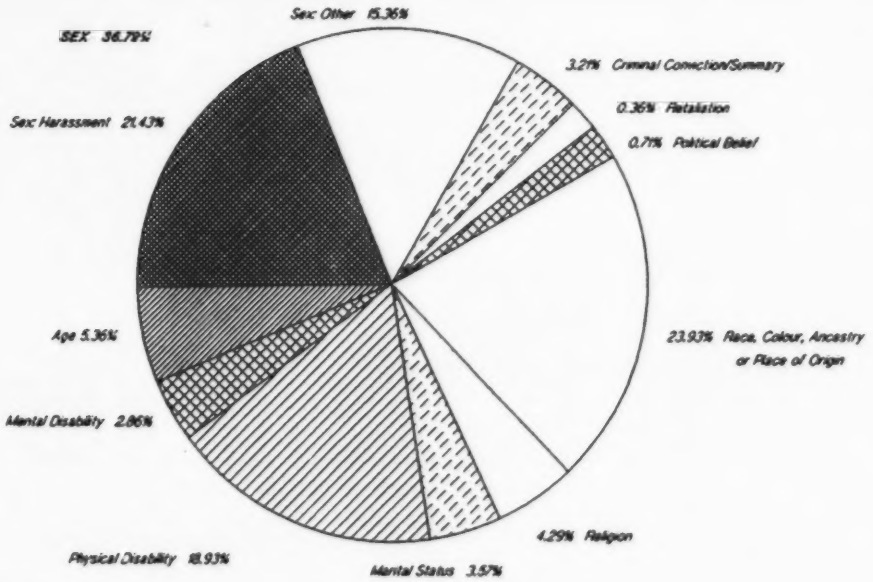
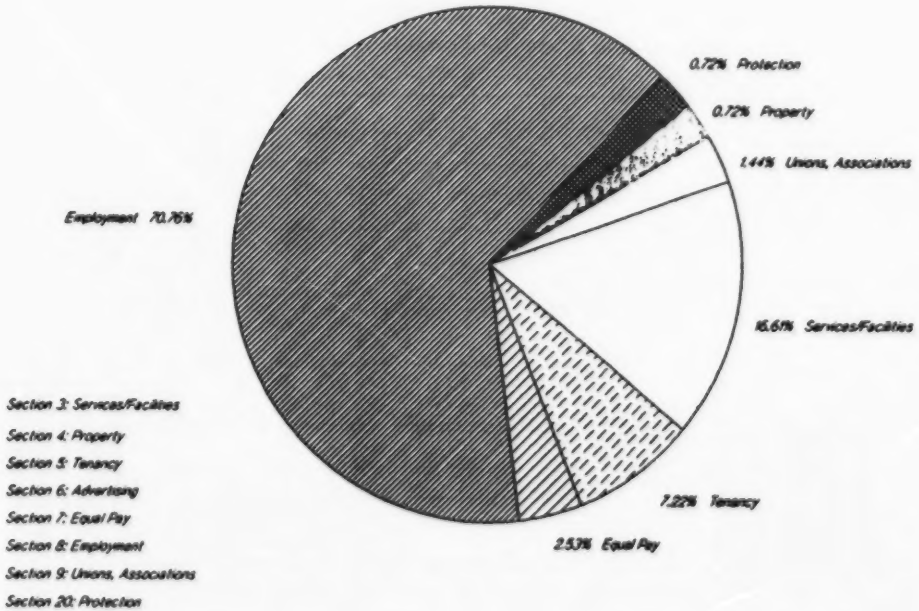


Table 6

COMPLAINTS BY SECTION OF THE ACT

April 1, 1987 to March 31, 1988



Appendix D — Budget

The Council was allocated \$1,167,101 as its budget for the fiscal year 1987-88.

MAJOR EXPENDITURES:

Salaries	\$604,000
Rent	\$95,000
Professional Services	\$71,000
Travel	\$35,600
Office and Business Expenses	\$28,000

Appendix E — B.C. Council of Human Rights Offices

VICTORIA

British Columbia Council
of Human Rights
2nd Floor, 844 Courtney
Victoria, B.C.
V8W 1C4
387-3710

TOLL FREE NUMBER 1-800-663-0876

VANCOUVER

British Columbia Council
of Human Rights
406, 815 Hornby St.
Vancouver, B.C.
V6Z 2E6
660-6811

Employment Standards Offices

Deer Lake Centre
4946 Canada Way
Burnaby, B.C.
V5G 4J6
299-7211

45904 Victoria Ave.
Chilliwack, B.C.
V2P 2T1
795-8400

117 — 10th Ave. South
Cranbrook, B.C.
V1C 2N1
426-1291

Room 206, Court House
420 Cumberland Road
Courtenay, B.C.
V9N 2C4
334-1225

1201 — 103rd Ave.
Dawson Creek, B.C.
V1G 4J2
784-2390

220, 546 St. Paul St.
Kamloops, B.C.
V2C 5T1
828-4516

3rd Floor, 1019 Wharf St.
Victoria, B.C.
V8W 2Z3
387-1220

301, 1664 Richter St.
Kelowna, B.C.
V1Y 8N3
861-7404

13 Victoria Crescent
Nanaimo, B.C.
V9R 5B9
755-2342

310 Ward St.
Nelson, B.C.
V1L 5S4
354-6550

3547 Skaha Lake Rd.
Penticton, B.C.
V2A 7K2
492-1333

1044 — 5th Ave.
Prince George, B.C.
V2L 3H9
565-6120

108 — 320 Eby Street
Terrace, B.C.
V8G 5K8
638-3272

540 Borland St.
Williams Lake, B.C.
V2G 1R8
398-4478

Appendix F — The B.C. *Human Rights Act*

HUMAN RIGHTS ACT

CHAPTER 22

*[Act administered by the Ministry of Labour]**Assented to May 16, 1984.*

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| 3. Discrimination in public facilities | 7. Discrimination in wages |
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Interpretation

1. In this Act

- "age" means an age of 45 years or more and less than 65 years;*
- "council" means the British Columbia Council of Human Rights;
- "employers' organization" means an organization of employers formed for purposes that include the regulation of relations between employers and employees;
- "employment" includes the relationship of master and servant, master and apprentice and principal and agent, if a substantial part of the agent's services relate to the affairs of one principal, and "employ" has a corresponding meaning;
- "employment agency" includes a person who undertakes, with or without compensation, to procure employees for employers or to procure employment for persons;
- "occupational association" means an organization, other than a trade union or employers' organization, in which membership is a prerequisite to carrying on a trade, occupation or profession;

6/9/85

* In January 1988, the British Columbia Court of Appeal in *Connell and Harrison v. U.B.C.* found that the definition of age in the *Human Rights Act* is of "no force and effect." The matter is to be heard by the Supreme Court of Canada in 1989.

"person" includes an employer, an employment agency, an employers' organization, an occupational association and a trade union;

"trade union" means an organization of employees formed for purposes that include the regulation of relations between employees and employers.

1984-22-1.

PART 1

DISCRIMINATORY PRACTICES PROHIBITED

Discriminatory publication

2. (1) No person shall publish or display before the public, or cause to be published or displayed before the public, a notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against a person or class of persons in any manner prohibited by this Act.

(2) Notwithstanding subsection (1) but subject to the *Civil Rights Protection Act*, a person may, by speech or in writing, freely express his opinions on a subject.

1984-22-2.

Discrimination in public facilities

3. No person shall

(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or

(b) discriminate against a person or class of persons with respect to any accommodation, service or facility customarily available to the public, because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons unless the discrimination relates, in the case of sex, to the maintenance of public decency or, in the case of sex or physical or mental disability, to the determination of premiums or benefits under contracts of life or health insurance.

1984-22-3.

Discrimination in purchase of property

4. No person shall

(a) deny to a person or class of persons the opportunity to purchase a commercial unit or dwelling unit that is in any way represented as being available for sale,

(b) deny to a person or class of persons the opportunity to acquire land or an interest in land, or

(c) discriminate against a person or class of persons with respect to a term or condition of the purchase or other acquisition of a commercial unit, dwelling unit, land or interest in land,

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons.

1984-22-4.

Discrimination in tenancy premises**5. (1) No person shall**

(a) deny to a person or class of persons the right to occupy, as a tenant, space that is in any way represented as being available for occupancy by a tenant, or

(b) discriminate against a person or class of persons with respect to a term or condition of the tenancy of the space,

because of the race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of persons, or of any other person or class of persons.

(2) Subsection (1) does not apply where a person in any way represents that space is available for occupancy by another person who is to share with him the use of any sleeping, bathroom or cooking facilities in the space.

1984-22-5.

Discrimination in employment advertisements

6. No person shall publish or cause to be published an advertisement in connection with employment or prospective employment that expresses a limitation, specification or preference as to race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age unless the limitation, specification or preference is based on a bona fide occupational requirement.

1984-22-6.

Discrimination in wages

7. (1) No employer shall discriminate between his male or female employees by employing an employee of one sex for work at a rate of pay that is less than the rate of pay at which an employee of the other sex is employed by that employer for similar or substantially similar work.

(2) For the purposes of subsection (1), the concept of skill, effort and responsibility shall, subject to such factors in respect of pay rates as seniority systems, merit systems and systems that measure earnings by quantity or quality of production, be used to determine what is similar or substantially similar work.

(3) A difference in the rate of pay between employees of different sexes based on a factor other than sex does not constitute a failure to comply with this section where the factor on which the difference is based would reasonably justify the difference.

(4) No employer shall reduce the rate of pay of an employee in order to comply with this section.

(5) Where an employee is paid less than the rate of pay to which he is entitled under this section, he is entitled to recover from his employer, by action, the difference between the amount paid and the amount to which he is entitled, together with the costs, but

(a) no action shall be commenced later than 12 months from the termination of his services, and

(b) the action applies only to wages of an employee during the 12 month period immediately preceding the date of the termination of his services, or the date of the commencement of his action, whichever date occurs first.

1984-22-7.

24/9/84

Discrimination in employment

8. (1) No person or anyone acting on his behalf shall
- (a) refuse to employ or refuse to continue to employ a person, or
 - (b) discriminate against a person with respect to employment or any term or condition of employment,

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age of that person or because of his conviction for a criminal or summary conviction charge that is unrelated to the employment or to the intended employment of that person.

(2) No employment agency shall refuse to refer a person for employment for any reason mentioned in subsection (1).

(3) Subsection (1) does not apply

- (a) as it relates to age, to any bona fide scheme based on seniority, or
- (b) as it relates to marital status, physical or mental disability, sex or age, to the operation of any bona fide retirement, superannuation or pension plan or to a bona fide group or employee insurance plan.

(4) Subsections (1) and (2) do not apply with respect to a refusal, limitation, specification or preference based on a bona fide occupational requirement.

1984-22-8.

Discrimination by unions and associations

9. No trade union, employers' organization or occupational association shall
- (a) exclude any person from membership,
 - (b) expel or suspend any member, or
 - (c) discriminate against any person or member

because of the race, colour, ancestry, place of origin, political belief, religion, marital status, physical or mental disability, sex or age of that person or member, or because of his conviction for a criminal or summary conviction charge that is unrelated to the employment or to the intended employment of that person.

1984-22-9.

PART 2

COUNCIL OF HUMAN RIGHTS

Council established

10. (1) There shall be established a council known as the British Columbia Council of Human Rights consisting of not more than 5 members appointed by the Lieutenant Governor in Council to hold office during pleasure.

(2) The Lieutenant Governor in Council shall designate a member of the council as chairman.

(3) Each member of the council shall be paid the actual and reasonable expenses incurred by him in discharging his duties as a member of the council, and a member who is not an employee under the *Public Service Act* shall be paid remuneration for his services as a member of the council as the Lieutenant Governor in Council orders.

1984-22-10.

24/9/84

Complaints

11. (1) A person who alleges that he has been discriminated against contrary to this Act may file a complaint with particulars with the council.

(2) Where the council is satisfied that a person alleged to have been discriminated against contrary to this Act consents to the filing of a complaint and, in the opinion of the council, it is in the interests of that person that the complaint be filed, the council may accept a complaint filed on his behalf by another person.

(3) Where a complaint is filed under subsection (2), the person on whose behalf the complaint is filed shall, for the purposes of sections 12 to 16, be considered to be the complainant.

(4) Subject to section 13, the council shall investigate a complaint.

1984-22-11.

Inspection of records

12. For the purposes of conducting an investigation, the council may make an examination and inquiry that it considers necessary to ascertain whether this Act has been complied with and may

(a) require a complainant or a person who is alleged to have contravened this Act to disclose, orally or in writing, information the council requires respecting the subject matter of the complaint, and

(b) require the production of records relating to the subject matter of the complaint.

1984-22-12.

Decision not to proceed with investigation

13. (1) The council may decide not to proceed with the investigation of a complaint where it appears to the council that the complaint

(a) is not within the jurisdiction of the council,

(b) could be more appropriately dealt with under another Act,

(c) is trivial, frivolous, vexatious or made in bad faith, or

(d) is based on facts that occurred more than 6 months before the complaint was filed, unless the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

(2) The council shall not decline to proceed with an investigation by reason only that there was no intent by the person against whom the complaint was made to contravene this Act.

(3) Where the council decides not to proceed with an investigation, it shall so inform the complainant in writing.

1984-22-13.

Procedure after investigation

14. (1) On completion of an investigation, the council shall

(a) order that the proceedings be discontinued,

(b) recommend a settlement of the complaint and, where the recommendation is not accepted by the complainant or the person alleged to have contravened this Act, submit a report to the minister,

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- (c) submit a report to the minister, or
 - (d) designate one member of the council to receive, as specified by him, written or oral submissions from the complainant and the person alleged to have contravened this Act, and the member of council
 - (i) where he considers the complaint is not justified, shall dismiss the complaint, or
 - (ii) where he considers the complaint is justified, shall make an order described in section 17 (2) (a) and may make an order described in section 17 (2) (b).
- (2) Section 16 (4) and (5) applies where oral submissions are made under subsection (1) (d) of this section.
- (2.1) A member of the council who is designated under subsection (1) (d) has, for the purposes of that subsection,
- (a) the privileges and protection of section 12 of the *Inquiry Act*, and
 - (b) where oral submissions are made under subsection (1) (d), the power of sections 15 and 16 of the *Inquiry Act*
- given to a commissioner appointed under Part 2 of that Act.
- (3) On receipt of a report under subsection (1) (b) or (c), the minister shall
- (a) refer the complaint to a board of inquiry, or
 - (b) order that the proceedings be discontinued.

1984-22-14; 1985-51-32, effective July 19, 1985 (B.C. Reg. 232/85).

Decision to be communicated in writing

15. An order under section 14 (1) (a) or (d) (ii) or section 14 (3) or the dismissal of a complaint under section 14 (1) (d) (i) shall be communicated in writing to the complainant and the person who is alleged to have contravened this Act, and, where the proceedings are discontinued or the complaint is dismissed, no further proceedings under this Act shall be taken in relation to the subject matter of the discontinued proceedings or the dismissed complaint.

1984-22-15.

PART 3

BOARD OF INQUIRY

Board of inquiry

- 16.** (1) A board of inquiry shall consist of one person appointed by the minister.
- (2) A board of inquiry has, for the purposes of a reference under section 14 (3), the power, privileges and protection of sections 12, 15 and 16 of the *Inquiry Act* given to a commissioner appointed under Part 2 of that Act.
- (3) The persons who are entitled to be parties to proceedings before a board of inquiry are
- (a) the complainant,
 - (b) where the complaint was filed under section 11 (2), the person who filed the complaint on behalf of the complainant,
 - (c) the person who is alleged to have contravened this Act, and
 - (d) any other person whom the board of inquiry considers would be directly affected by an order made by it.

6/9/85

(4) A board of inquiry shall give the parties the opportunity to be represented by counsel, to present relevant evidence, to cross examine witnesses and to make submissions.

(5) A board of inquiry may receive and accept on oath, affidavit or otherwise, evidence or information that it, in its discretion, considers necessary and appropriate, whether or not the evidence or information would be admissible in a court of law.

(6) Where a party to a matter before a board of inquiry complains to the minister that the board has failed to proceed expeditiously, the minister may, after consulting the parties and the board, issue an order he considers necessary to ensure the matter will be disposed of without further undue delay.

1984-22-16.

Disposition of complaints

17. (1) Where a board of inquiry considers that a complaint is not justified, it shall dismiss the complaint.

(2) Where a board of inquiry considers that a complaint is justified, it

(a) shall order the person who contravened this Act to cease the contravention and to refrain from committing the same or a similar contravention, and

(b) may order the person who contravened this Act to

(i) make available to the person discriminated against the right, opportunity or privilege that, in the opinion of the board, he was denied contrary to this Act, and

(ii) compensate the person discriminated against for all, or a part the board determines, of any wages or salary lost, or expenses incurred, by the contravention,

and, in addition to or instead of any other order under this paragraph, may order the person who contravened this Act to pay to the person discriminated against an amount not exceeding \$2 000.

(3) A board of inquiry may make an order as to costs it considers appropriate.

(4) Where an order is made under subsection (2) or (3) or section 14 (1) (d) (ii), the council or the person who was discriminated against and in whose favour the order is made may file a certified copy of the order with the Supreme Court or with a County Court, and on being filed the order has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of that court.

1984-22-17.

PART 4

GENERAL

Disclosure

18. (1) A member of the council or any person employed in the administration of this Act shall not be required in any proceedings or otherwise, except before a board of inquiry or in a judicial review respecting a complaint under this Act,

(a) to give evidence, or

(b) to produce records

relating to information obtained or a communication received in the investigation of a complaint under this Act.

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(2) The minister shall not be compelled to give evidence in any proceedings or otherwise respecting any matter, communication or information connected with the administration or operation of this Act, or otherwise coming to his knowledge under or by reason of this Act.

1984-22-18.

Exemptions

19. (1) Where a charitable, philanthropic, educational, fraternal, religious or social organization or corporation that is not operated for profit has as a primary purpose the promotion of the interests and welfare of an identifiable group or class of persons characterized by a physical or mental disability or by a common race, religion, age, sex, marital status, political belief, colour, ancestry or place of origin, that organization or group shall not be considered as contravening this Act because it is granting a preference to members of the identifiable group or class of persons.

(2) The council may approve any program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups, and any approved program or activity shall be deemed not to be in contravention of this Act.

1984-22-19.

Protection

20. No person shall evict, discharge, suspend, expel, intimidate, coerce, impose any pecuniary or other penalty on or otherwise discriminate against a person because that person complains, gives evidence or otherwise assists in respect of the initiation or prosecution of a complaint or other proceeding under this Act.

1984-22-20.

Style of cause for proceedings

21. (1) A proceeding under this Act in respect of a trade union, employers' organization or occupational association may be taken in its name.

(2) An act or thing done or omitted by an employee, officer, director, official or agent of any person within the scope of his authority shall be deemed to be an act or thing done or omitted by that person.

1984-22-21.

Technical and other matters

22. (1) No proceeding under this Act is invalid by reason of any defect in form or any technical irregularity.

(2) Where there is a conflict between a provision of this Act and a provision of another enactment, this Act prevails.

1984-22-22.

Offence Act

23. Section 5 of the *Offence Act* does not apply in respect of this Act or the regulations.

1984-22-23.

Regulations

24. The Lieutenant Governor in Council may make regulations.

1984-22-24.

25. [Spent. 1984-22-25.]

26. [Spent. 1984-22-26.]

Transitional

27. (1) Where, before this Act came into force, an allegation was referred by the minister to a board of inquiry under section 16 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, and the board of inquiry has not, on the day this Act came into force, disposed of the allegation, the board of inquiry shall continue to have the same power to inquire into, to make orders in respect of and to dispose of the allegation as it had before this Act came into force, and in relation to that allegation or an allegation referred to in subsection (2) of this section, sections 13, 17, 18, 21 and 24 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, shall, notwithstanding the repeal of that Act, remain in force.

(2) Where before this Act came into force an allegation was made orally or in writing to the director and there is no evidence that the allegation was received by the director under section 15 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, within 6 months after the date of the alleged contravention, the board of inquiry to which the allegation was referred by the minister has, notwithstanding section 23 of that Act or any decision of a court to the contrary, the same power to inquire into, to make orders in respect of and to dispose of the allegation as it would have had before this Act came into force had the allegation been received within 6 months after the date of the alleged contravention.

(3) Nothing in this Act affects an order made before this section came into force by a board of inquiry under section 17 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, and notwithstanding the repeal of that Act, section 24 of the *Human Rights Code*, R.S.B.C. 1979, c. 186, shall remain in force in relation to that order.

1984-22-27.

Commencement

28. This Act comes into force by regulation of the Lieutenant Governor in Council.

1984-22-28.

[Note: Section 10 effective July 20, 1984, B.C. Reg. 231/84, Part II Gazette Vol. 27, p. 336. Sections 1 to 9 and 11 to 27 effective September 14, 1984, B.C. Reg. 282/84, Part II Gazette Vol. 27, p. 456.]

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**Province of
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